IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8218 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MERAMAN HAJABHA SUVA POA OF LEGAL HEIRS & REP OF DECD

Versus

MUNICIPAL COMMISSIONER OF THE CITY OF JAMNAGAR

Appearance:

MR DIVYESH SEJPAL for Petitioner

MR JR NANAVATI for Respondent No. 1, 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 03/05/2001

ORAL JUDGEMENT

1. Rule.

2. Learned Senior Counsel Mr. Nanavati waives service of rule.

3. The petitioner has approached this Court seeking following reliefs:-

(a) Your Lordships be pleased to issue the writ of mandamus or any other appropriate writ and be pleased to direct the respondents to remove the encroachment of slum dwellers, kuchcha constructions and other encroachers on 18 meter wide road leading from Bedeshwar to Wollen Mill, near the railway line of the city of Jamnagar and direct the respondents to provide to the petitioners and other residents of the area a clear road that is provided in the town planning scheme in the interest of justice and equity.

(b) Your Lordships be pleased to direct the respondents to initiate appropriate proceedings to remove the encroachment on the 18 metre wide road leading from Bedeshwar to Wollen Mill, near railway line of the city of Jamnagar during the pendency, admission and final disposal of the petition in the interest of justice and equity.

(c) Your Lordships be pleased to grant such other relief and further order as deemed fit in the facts and circumstances of the case and in the interest of justice and equity.

4. The petitioner is the owner of Regular Survey Nos. 140, 143 and 144 of Jamnagar. According to him, his access to the said land through 18 meters road as provided in T.P. Scheme has been encroached upon by unauthorised occupants, and therefore, the relief as aforesaid is sought on notice being served. Respondents have appeared through learned Senior Counsel Mr. Nanavati, and respondent no. 1 has filed his affidavit in reply. It is the case of respondent no. 1 that notices were served on the unauthorised occupants for clearing the road. Aggrieved by the said notice, said occupants had filed suit No. 407/88 in the Court of Civil Judge (Senior Division) at Jamnagar and had obtained injunction, and therefore, respondent no. 1 was not in a position to clear the road. It is stated in the affidavit that the encroachment was made by weaker sections of the society and the municipal corporation. Respondent no. 1 proposes to take action of clearing the disputed road in accordance with law.

5. Learned Senior Counsel Mr. Nanavati states that the said suit is now disposed of. He places on record a xerox and a certified copy of the judgement and decree

which indicates that the said suit is not allowed, as it is held to be a premature suit. Mr. Nanavati states that, the respondents are ready and willing, and they will remove the encroachment after following the procedure as provided under the law. Since the relief sought for is practically admitted by the other side, the petition would stand allowed. The respondent Authorities shall remove the encroachment from the land in question in accordance with law. This work shall be undertaken as expeditiously as possible. Rule is made absolute. No orders as to costs.

6. Direct service is permitted.

(A.L. DAVE, J.)

siji